

Thota Ganga Laxmi

v.

Government of Andhra Pradesh

(High Court Of Kerala)

HON'BLE MR. JUSTICE MARKANDEY KATJU HON'BLE MR. JUSTICE T.S. THAKUR

Thota Ganga Laxmi v. Government of Andhra Pradesh

Civil Appeal No. 317 Of 2007 | 13-07-2010

1. Heard learned counsel for the appearing parties.
  
2. This Appeal has been filed against the impugned order of the Andhra Pradesh High Court dated 08th November, 2006 passed in Writ Petition No. 8518 of 2006, whereby the High Court has dismissed the Writ Petition relying upon a Full Bench judgment of the same High Court in the case of Yanala Maheshwari & Ors. v. Ananthula Sayamma & On. reported in (: AIR 2007 A.P.57 (F.B.) : 2006 (6) ALT 523 (F.B.).
  
3. It appears that the father of the appellants purchased the plot in question from respondent No. 4 by a registered sale deed dated 21st June, 1983 and since then the appellants have been in possession and enjoyment of the said property. Subsequently, it appears that the fourth respondent purported to get the said sale deed cancelled unilaterally, executing the cancellation deed dated 4.8.2005 and the same was registered by the third respondent without any notice to the appellants.
  
4. A Writ Petition was filed seeking declaration that the cancellation deed is illegal and that has been disposed of by the impugned judgment holding that the appellants should approach the civil court.
  
5. In our opinion, there was no need for the appellants to approach the Civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and nonest and can be ignored altogether. For illustration, if ""A"" transfers a piece of land to ""B"" by a registered sale deed, then, if it is not disputed that ""A"" had the title to the land, that title passes to ""B"" on the registration of the sale deed (retrospectively from the date of the execution of the same) and ""B"" then becomes the owner of the land. If ""A"" wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request ""B"" to sell the land back to ""A"" but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.
  
6. In this connection, we may also refer to Rule 26(i)(k) relating to Andhra Pradesh under S.69 of the Registration Act, which states:

The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are

executed by all the executants and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously "registered conveyance on sale to be Government or Assigned or Endowment lands or properties not register able by any provision of law.

7. A reading of the above rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration/ thereof were wholly void and nonest and meaningless transactions.

8. The Appeal is disposed of with the above observations. The impugned judgment, is set aside. No order as to costs.

9. In view of the above order, no orders need be passed on the application for intervention and it is disposed of accordingly.

Civil Appeal No. 791 OF 2007. Civil Appeal No. 867 oF 2007. Civil Appeal No. 1031 OF 2007. Civil Appeal No. 702 of 2007. Civil Appeal No. 1879 OF 2007. Civil Appeal No. 1917 OP 2007. Civil Appeal No. 531 Of 2010 @ S.L.P.(C) No. 7969 of 2007. Civil Appeal No. 5314 OF 2010 @ S.L.P.(c) No. 9360 of 2007

10. Leave granted in the Special Leave Petitions.

11. Since, the point involved in these appeals is the same as in Civil Appeal No. 317 of 2007, the order passed by us today in Civil Appeal No. 317 of 2007 shad also govern these appeals and they are also disposed of in the same terms. No order as to costs.